# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

PHYLLIS McCARTHY	)
Claimant	)
VS.	)
	) Docket No. 222,128
JACOBSON STORES, INC.	)
Respondent	)
AND	)
	)
AMERISURE COMPANIES	)
Insurance Carrier	)

## ORDER

Respondent and its insurance carrier requested review of the Amended Preliminary Decision dated January 13, 1998, entered by Administrative Law Judge Robert H. Foerschler.

### Issues

In an attempt to determine the extent of claimant's alleged head injury, the Administrative Law Judge authorized neurologist Arthur A. Allen, II, M.D., to administer diagnostic testing. Respondent challenges the Administrative Law Judge's implied finding that claimant sustained personal injury by accident arising out of and in the course of her employment. That is the only issue before the Appeals Board on this review.

# FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

This appeal should be dismissed.

Claimant testified she was struck on the head, neck, and upper back by a 6-foot long shelf and empty cardboard boxes on January 21, 1997, while working for the respondent. Before testimony was presented at the preliminary hearing, the Judge asked if there was any issue that claimant was injured at work and respondent's attorney replied that was not an issue:

THE COURT: . . . What are the issues in this thing? Is there any question that she got hurt at work? Is that an issue?

MR. AUSTIN: Not really, Judge, no.

But respondent and its insurance carrier now contend in their brief submitted to the Appeals Board that claimant did not prove she was injured as a result of the January 21, 1997, incident. After reviewing several inches of medical records and observing claimant testify, the Judge found she did sustain a work-related injury.

The Appeals Board finds the issue actually presented to the Administrative Law Judge was whether claimant needed medical treatment. That preliminary hearing issue, however, is not subject to appeal at this juncture of the proceeding. But, it may be reserved for the full hearing on the claim. See K.S.A. 1997 Supp. 44-534a.

In their notice of appeal to this Board, the respondent and its insurance carrier raised the issue of timely notice required by K.S.A. 44-520. But that issue was not presented to the Administrative Law Judge and, therefore, may not be considered on review. See K.S.A. 1997 Supp. 44-555c, which limits Appeals Board review to those questions of law and fact presented to the administrative law judge.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that this appeal should be, and hereby is, dismissed.

## IT IS SO ORDERED.

Dated this	day of March 1998
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### **BOARD MEMBER**

c: Steven D. Treaster, Overland Park, KS
Jeffrey S. Austin, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director